IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1947.

No. 90

PEOPLE OF THE STATE OF ILLINOIS Ex Rel. VASHTI McCOLLUM,

Appellant,

vs.

BOARD OF EDUCATION OF SCHOOL DISTRICT No. 71, CHAMPAIGN COUNTY, ILLINOIS, and ELMER C. BASH and ALICE J. BASH, and WANDA I. BASH, a minor, by ELMER C. BASH, her father and next friend,

Appellees.

APPEAL FROM THE SUPREME COURT OF THE STATE OF ILLINOIS

APPELLEES' SUPPLEMENTAL BRIEF

JOHN L. FRANKLIN,
First National Bank Building,
Champaign, Illinois.
A. R. PETERSON,
OWEN RALL,
BURNHAM M. FISK,
135 South LaSalle Street,
Chicago 3, Illinois,
Attorneys for Appellees.

MEYER & FRANKLIN,
Champaign, Illinois,
ECKERT & PETERSON,
Chicago, Illinois,
Of Counsel.

BARNARD & MILLER, 33 S. Market St., Chicago. FRanklin 0562.

INDEX.

	PAGE
I. Jurisdiction	4
II. Secularization of the public schools is not a requirement of the Federal Constitution	5
III. The Federal Constitution does not protect taxpayers against the use by the states of tax monies for the teaching of opinions with which the taxpayer disagrees	8
IV. The Champaign Religious Education Council is not an agent or instrumentality of the Board of Education or of the State of Illinois	13
Conclusion	16

Table of Authorities Cited.

CASES.

Cantwell v. Connecticut, 310 U.S. 296	9
Hamilton v. Board of Regents of University of California, 293 U.S. 245	10
Nixon v. Condon, 286 U.S. 73	16
United States v. Ballard, 322 U.S. 78	9
United States v. Classic, 313 U.S. 299	14

STATUTES.

Virginia Bill for Establishing Religious Freedom	8

TEXTBOOKS, ETC.

James Madison's Memorial and Remonstrance	12
"To Secure These Rights" (1947), report of the President's Committee on Civil Rights	18

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1947.

No. 90

PEOPLE OF THE STATE OF ILLINOIS Ex Rel. VASHTI McCOLLUM,

Appellant,

vs.

BOARD OF EDUCATION OF SCHOOL DISTRICT No. 71, CHAMPAIGN COUNTY, ILLINOIS, and ELMER C. BASH and ALICE J. BASH, and WANDA I. BASH, a minor, by ELMER C. BASH, her father and next friend,

Appellees.

APPEAL FROM THE SUPREME COURT OF THE STATE OF ILLINOIS

APPELLEES' SUPPLEMENTAL BRIEF

MAY IT PLEASE THE COURT:

This supplemental brief is filed in response to the invitation of the Court, tendered during oral argument. In tendering this opportunity to appellees, the Court has recognized the serious disadvantage to which the appellees have been put by the Court's granting permission to numerous attorneys to file *amici curiae* briefs following the submission of the appellees' brief. Of course, it will be apparent to the Court that the time intervening between argument of this case and consideration of it by the

Court does not permit appellees sufficient time to attempt a comprehensive treatment of each of these briefs *amici curiae*.

This poses a dilemma to us which involves our either accepting the invitation of the Court, in which case time will permit answering only a portion of the points raised, or permitting the opportunity to pass, in which case the whole of these briefs will go unanswered. We choose the first horn of the dilemma, but owing to the shortness of our time we beg the Court not to treat our failure to deny an argument as an admission of its correctness.

As we are not sure that the Court intended that we should feel at liberty to answer all of the briefs *amici curiae* and are certain only that it was intended that we might answer the two last filed—filed on the very day of the oral argument without our consent—, we will limit the scope of this brief to certain of the points raised in these briefs, namely, that filed by Mr. Kenneth W. Greenawalt on behalf of the American Civil Liberties Union and that filed by Messrs. Homer Cummings and William D. Donnelly as counsel for the General Conference of Seventh Day Adventists.

Preliminary to a discussion of the leading contentions set forth in the briefs *amici curiae* to which this reply is limited, we believe that certain misstatements with reference to the facts, as set forth in the American Civil Liberties Union brief, should be pointed out. On page 3 of the American Civil Liberties Union brief, it is stated that some denominations oppose the plan and transcript references are given. Lest the Court be misled by these references we point out that the churches there mentioned are not located in the school district involved here and so far as the record appears, no adherents of these denominations were resident in the school district.

At page 6 of the same brief, the inference is set forth that "request cards" were mimeographed by the school board and at the expense of the school board. Actually, the record shows (Tr. 240) that such cards were mimeographed only once by the school office and that in such isolated instance, the Religious Education Council promptly and fully paid therefor. Other inferences are contained in the statement of facts in this brief which are misleading. We have not time to answer them. We refer the Court to the agreement in oral argument by counsel for both the appellant and the appellees that the trial court's opinion (Tr. 60-89) sets forth a full, fair and accurate summary of the material facts involved. Please see this statement of facts.

We will now turn to the leading arguments developed in these two briefs *amici curiae*.

I.

Jurisdiction.

Both briefs *amici curiae* show a substantial misunderstanding of the facts relating to jurisdiction. While we do not think that jurisdiction is a proper concern of friends of the court, whose only excuse for being in the litigation is to be helpful to the court in avoiding an incorrect expression of the law in disposing of the case on its merits, we will refer briefly to their treatment of this subject. The brief of the General Conference of Seventh Day Adventists refers to the allegations in the complaint and the answer and the reliance on the First Amendment contained in the complaint. It further refers to the fact that the Supreme Court of Illinois recognized that the appellant relied upon the Fourteenth Amendment and the First Amendment in claiming that the alleged segregation of public school pupils into sectarian groups for the purpose of instruction in a public school violated her rights of religious freedom. It likewise points out that the Supreme Court of Illinois passed upon that question. From these facts, this friend of the court leaps, without aid of references to the record or application of logic, to the unfounded supposition that the appellant relied in the Supreme Court of Illinois upon the establishment of religion clause of the First Amendment and that the court passed upon such right. This was, of course, not the case, for the establishment of religion clause of the First Amendment was neither referred to in the errors relied upon in the Supreme Court of Illinois (see Appellees' Brief, p. 2), nor was any argument made in that court with reference thereto and, *a fortiori,* no decision was made thereon.

Counsel for American Civil Liberties Union falls into the same error on page 3 of his brief, when he states

loosely that the First and Fourteenth Amendments of the United States Constitution and "the principle of separation of church and state" were passed upon "by the Illinois courts." It is, of course, not a question of what the trial court passed upon, nor is it a question of whether the First or Fourteenth Amendment was mentioned in the Supreme Court of Illinois, but it is a question of whether or not the establishment of religion clause of the First Amendment was relied upon there, argued there, and passed upon there. We have elsewhere fully treated this subject (Appellees' Brief, p. 2 *et seq.*) and we do not believe that the Court will be misled by the inexact and gratuitous arguments of counsel who are not familiar with the proceedings heretofore had in this case.

II.

Secularization of the public schools is not a requirement of the Federal Constitution.

Running through the entire brief of American Civil Liberties Union is a fundamental misconception of the extent to which public schools throughout the several states are secularized and the cause therefor. This brief first of all assumes that public schools are wholly secular. This, however, flies in the face of the fact that, as pointed out in our original brief and as demonstrated by a government publication based on a survey, thirty-six states either permit or require Bible reading in the public schools (Appellees' Brief, p. 118). Further, it may be safely said that in no state is all reference to religion or the existence of a supreme being excised from the school program.

Nevertheless, religious education as such and, of course, organized worship are quite generally omitted from the public school program. As pointed out in the brief of American Civil Liberties Union (p. 12), our public school

is a relatively recent development dating from about 1840. Prior to that time almost all education was conducted either by church schools or private schools. Progressively during the nineteenth century religious emphasis was eliminated from the public school as a result of the practical situation which faced school administrators as the heterogeneity of our population increased. The increasing diversity of population and consequent diversity of religious beliefs in local communities, of course, made it progressively more difficult to include religious services in which all could conscientiously participate.

This practical situation has produced the public school as it exists today. During the one hundred and seven years that have intervened since Horace Mann founded the public school movement, no appeal has ever been made until now to the Federal Constitution or to the Federal courts either to bring about secularization of the public school or to prevent such religious education therein as may be permitted by state law.

Had the First and Fourteenth Amendments been the instruments of accomplishing the secularization of the public schools, and adequate to that purpose, there would have been no occasion for the political battle of 1876 referred to in our original brief (pp. 102-104).

It is a strange feat of logic indeed which starts with the historic fact that the public school was secularized by the pressure of public opinion motivated by practical considerations of public policy (see American Civil Liberties Union brief, p. 12), without any appeal whatever to the Federal Constitution, and concludes therefrom that the Constitution is to be interpreted to require such secularization.

An extension of this illogical assumption leads avid secularists to appeal to the Federal Constitution for the maintenance of a *status quo* which was achieved in this

instance by political processes without resort to the Federal Constitution. In fact, some persons believe so strongly in the wisdom of complete secularization of public education that they assume that somewhere in the Federal Constitution will be found prohibitions of all other forms of public education.

Protagonists of the *status quo* are wont to look first to the law for protection anl are quick to believe that somewhere in the Constitution there must be a provision which will protect them against having to defend at the bar of public opinion the wisdom of their position. Judges, too, sometimes are victims of the error of thinking that everything which they believe to be good or right is to be found crystalized in constitutional provisions, provided the framers' intention and the voters' understanding of them at the time of their adoption are not assigned too much weight in interpreting such constitutional provisions. We are all justly proud of Gladstone's recognition of our Constitution as "the most wonderful work ever struck off at a given time by the brain and purpose of man", but there is no implication in that, nor in any judicial interpretation of the Constitution, which warrants the supposition that every ideology which may be supposed to be good is to be found in the Constitution. Many good institutions and many great advances toward building a democratic way of life on this continent have been engineered, built upon, and moved toward perfection without constitutional initiation, direction or compulsion. It will always be so.

Secularization of the public school may in the minds of many be a very good and high purpose but it did not find its genesis in the Constitution of the United States and, properly, it cannot be cemented into our institutions by an appeal to the Constitution. To do so is to remove the question of the wisdom of secularization of the public

schools from public discussion and debate. Secularization of the public schools has reached its present stage by free public discussion and by the normal functions of democratic processes and there is no warrant in the Constitution for now preventing those same democratic processes from modifying the nature and extent of such secularization.

III.

The Federal Constitution does not protect taxpayers against the use by the states of tax monies for the teaching of opinions with which the taxpayer disagrees.

The briefs of the American Civil Liberties Union (pp. 24-27) and of the General Conference of Seventh Day Adventists (pp. 19-26) contend that the First Amendment of the Federal Constitution prevents the use of state monies for the promotion of opinions with which the taxpayer disagrees. To the extent that this argument is bottomed upon the establishment of religion clause of the First Amendment, it is, we submit, completely answered by the discussion of that clause in our brief (pp. 44-100).

To the extent that this position is bottomed upon the "freedom of religion" clause of the First Amendment, no authority is cited therefor except references to the preamble of the Virginia Bill for Establishing Religious Freedom and a quotation from the Memorial and Remonstrance of James Madison.

The preamble to the Virginia Bill is quoted as follows:

> "To compel a man to contribute money for the propagation of opinions which he disbelieves is sinful and tyrannical."

Entirely aside from the consideration that this was not a substantive part of the Bill and that the Bill is no part of the Constitution of the United States, the quotation is

forcibly lifted from its context and as thus standing alone does not do Mr. Jefferson justice. It is perfectly absurd to say that the Federal Constitution is to be given any such meaning. Ideas grow too fertilely in the soil of American democracy to suggest that upon all ideas which are the permissible subject of governmental dissemination, taxpayers must think with utter uniformity. Certainly public opinion is sharply divided upon a multitude of ideas which are taught in the public school curriculum, many instances of which will occur to the Court as readily as to ourselves, in the various fields of the social sciences and even in the more exact sciences such as mathematics, chemistry and physics. In all of these, long-established "truths" are exploded in the day to day evolution of these subjects of human study and knowledge. Indeed, the only growth in human knowledge is the direct result of differing ideas, explosion of old ideas and creation of new ones.

Of course, no distinction is tenable between ideas in the field of religion and other vast reaches of human thought. As this Court has repeatedly recognized and most recently in *United States* v. *Ballard*, 322 U.S. 78 (1944) p. 86:

> "Freedom of thought, which includes freedom of religious belief, is basic in a society of free men. *West Virginia State Bd. of Edu.* v. *Barnette*, 319 U.S. 624. It embraces the right to maintain theories of life and death and of the hereafter which are rank heresy to followers of the orthodox faiths".

Also in *Cantwell* v. *Connecticut*, 310 U.S. 296, 307, (1939) this Court recognized that the mere determination by government of what ideas are religious ones and what are unreligious ones is itself a violation of the constitutional right of citizens to freedom of religion. The language of the court in this instance was:

> "But to condition the solicitation of aid for the perpetuation of religious views or systems upon a license,

the grant of which rests in the exercise of a determination by state authority as to what is a religious cause, is to lay forbidden burden upon the exercise of liberty protected by the Constitution."

If some person came to the conclusion that the science of mathematics was put to so many materialistic purposes that it was itself irreligious and that its study and propagation violated his conscientious scruples, this Court would undoubtedly hold that he had an absolute right to hold his opinion on the subject, but it certainly would not, because of his conscientious scruples, prohibit the expenditure of public monies for the teaching of mathematics.

An equally valid analogy and perhaps a more apparent possibility is that a militant Christian Scientist might appeal to this Court for protection of a belief that the practice of medicine was a mistaken, wrongful and irreligious intrusion into the field of divine healing. If so, we would implicitly trust this Court to protect that belief, but we as quickly assume that this Court would not on account of such belief either exempt the Christian Scientist from paying taxes, a portion of which are applied to the maintenance and support of medical schools, or abolish the medical schools.

The language of Mr. Justice Cardozo (Mr. Justice Brandeis and Mr. Justice Stone joining) in *Hamilton* v. *Board of Regents of the University of California*, 293 U.S. 245 (1934) is highly relevant and, if applied, is controlling here. That case involved the claim of conscientious objectors that they were entitled to enter the University of California without taking military training. This Court rejected such claim. In a separate concurring opinion, the justices mentioned above called attention, among other things, to the fact that (p. 266) from the beginnings of history "Quakers and other conscientious objectors have been exempted as a matter of grace from military service,

but the exemption, when granted, has been coupled with a condition, at least in many instances, that they supply the Army with a substitute or with the money necessary to hire one."

The separate concurrence continued (pp. 267-268):

> "For one opposed to force, the affront to conscience must be greater in furnishing men and money wherewith to wage a pending contest than in studying military science without the duty or pledge of service. Never in our history has the notion been accepted, or even, it is believed, advanced, that acts thus indirectly related to service in the camp or field are so tied to the practice of religion as to be exempt, in law or in morals, from regulation by the state. On the contrary, the very lawmakers who were willing to give release from warlike acts had no thought that they were doing anything inconsistent with the moral claims of an objector, still less with his constitutional immunities, in coupling the exemption with these collateral conditions.
>
> "Manifestly a different doctrine would carry us to lengths that have never yet been dreamed of. *The conscientious objector, if his liberties were to be thus extended, might refuse to contribute taxes in furtherance of a war, whether for attack or for defense; or in furtherance of any other end condemned by his conscience as irreligious or immoral.* The right of private judgment has never yet been so exalted above the powers and the compulsion of the agencies of government. One who is a martyr to a principle—which may turn out in the end to be a delusion or an error—does not prove by his martyrdom that he has kept within the law." (Italics supplied.)

It is clear that since the Constitution does not excuse payment of taxes for recruiting and other propagation of ideas favorable to military service and does not excuse the payment of taxes for the very consummation of waging war against which the taxpayer has strong religious scruples, the Constitution does not protect a taxpayer against the teaching at public expense of ideas with which

he, the taxpayer, happens not to agree—whether on religious or on other grounds.

Reference is made (brief, General Conference of Seventh Day Adventists, p. 23) to the "three pence" sentence contained in Madison's Memorial and Remonstrance. Here again the language quoted is wrested from its context. The quotation given is as follows:

> "Who does not see * * * That the same authority which can force a citizen to contribute three pence only of his property for the support of any one establishment, may force him to conform to any other establishment in all cases whatsoever."

What Madison was here complaining of was not the expenditure of three pence for the equal and non-discriminatory promotion of religion, but he was complaining that if an exaction could be made for the support of the Christion religion, as distinguished from all other religions, then the same power could establish as the preferred monopolistic religion of a state or nation a particular sect of the Christian religion. What Madison was contending for was equality of treatment of religions, and his objection to the expenditure of "three pence" was not that such an expenditure in aid of religion generally was improper but that it was improper to expend it for the establishment of one religion, even though that religion be the Christian religion. We have more fully treated this subject in our original brief (p. 28 *et seq.*).

The problem before this Court is one of interpretation of the Constitution of the United States and not of the preamble to the Bill for Establishing Religious Freedom in the State of Virginia, or of Madison's Memorial and Remonstrance. We suggest that the expression of Justices Cardozo, Brandeis and Stone, above set forth, furnishes a more authoritative guide than either of these. Furthermore, we submit that neither of the documents mentioned

contains any rule of judicial decision which supports any pronouncement that a taxpayer may enjoin the use of public monies for the teaching of ideas with which such taxpayer disagrees.

IV.

The Champaign Religious Education Council is not an agent or instrumentality of the Board of Education or of the State of Illinois.

The brief of the General Conference of Seventh Day Adventists demonstrates a fundamental misunderstanding of the record in this case. This misunderstanding is set forth at page 19 of the brief where it is stated, "The Council of Religious Education has been given general control over the teaching of religion in the schools * * *."

This misstatement is based upon the unfounded assumption that the Board of Education has granted the *exclusive* use of its school rooms to the Council. It further assumes that the Board of Education has not and will not grant similar free and equal use of its facilities to other religious organizations or groups. There is, of course, no support whatever in the record for this conclusion.

The superintendent of schools, as the executive officer of the appellant, testified as follows (Tr. 119):

> "The school buildings are now available to all religious denominations in this community to be used while they are being used by students. I am opening up these buildings to all these people with the permission of the board of education".

Again, he repeated (Tr. 118):

> "The schools are open to all denominations who want to teach in them".

Again, he said (Tr. 118):

> "The schools are available to Christian Scientists if they want to conduct the class. It would not be

practical for them to teach in the same room at the same time as Miss Chapin teaches. It would be done in another room."

Again, on the same page he said:

"The class room is available to people who teach religion to the effect that saluting the flag is wrong, but they have never asked for it."

Again, he testified (Tr. 120):

"Jehovah's Witnesses have used our high school swimming pool for baptismal purposes. They were readily granted that permission and without any rental. No other application to my knowledge has been made by Jehovah's Witnesses for use of the property under the control of the board of education and of course none has been refused".

The circumstance that all faiths which desire to make use of school rooms for the purpose of teaching religious education have grouped themselves together in perfect amity and cheerful cooperation, and the fact that no other group has sought such use certainly does not make of the Council an agency or instrumentality of the State.

Of course, the authorities referred to by the General Conference of Seventh Day Adventists' brief have no application here. These cases involved, situations where the citizen by statutes of the state, in order to exercise his constitutionally protected right of franchise, (specifically his right to have a voice in choosing candidates), was required to seek and obtain membership in a political party. This Court quite properly held that such a political party was not private in character, but became, by reason of its recognition by the State, and because it was an exclusive conduit for exercise of constitutional rights, an instrumentality of the State. The record in this case presents no comparable state of facts.

In *United States* v. *Classic*, 313 U.S. 299, (1941) the Court said of a political party, (p. 326):

> "Misuse of power, possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law, is action taken, 'under color of' state law."

This quotation apparently contains the pith of the language for which this and other similar cases are cited in this brief *amicus curiae*. But we submit that there is nothing whatever in our record to warrant here an application of this rule of decision.

Because the Council has not been given any exclusive power, it is quite irrelevant that the Council of Religious Education has not excluded or threatened to exclude any sect from participation in the Council. Nevertheless, a portion of the testimony of the president of the Council, read to this Court during the oral argument, will dispose of any contention that any sect has been excluded (Tr. 159):

> "I stated that not all denominations or religious beliefs are represented in the council. All are free to participate and we are anxious to have them. No religious denomination or recognized church or belief has ever sought membership or participation in that council whose membership has not been freely accepted. All denominations that we knew about in the community were invited to participate. Letters were sent to all that we could find and personal calls were made."

Of course, the contention that censorship of religion has been indulged in by the Council of Religious Education is too insubstantial to merit extended discussion. No transcript references are given to support it, and the real truth is that the act of the cooperating religious groups in appointing committees to examine personnel and curriculum to eliminate anything prejudicial to or intolerant of any of the groups was wholly voluntary. This was the action of the Council and binding on no one except those who voluntarily chose to participate as part of the Council. The

Court will recognize that censorship involves the use of government authority, and that the Bill of Rights as well as the Fourteenth Amendment are prohibitions against governmental action and do not operate against private individuals or organizations. For this we refer the Court to *Nixon* v. *Condon*, 286 U.S. 73 (1932), at p. 83.

CONCLUSION.

We respectfully suggest to the Court that while some organizations, religious as well as unreligious, have seen fit to interpose their objections here, by *amici curiae* briefs, to the use of public school buildings for religious education classes, this opposition should not be taken by the Court as evidence that there is no strong religious support for our cause. Because we have been confident that this Court would not be stampeded by the force of numbers either for or against such use of public buildings and because we felt that briefs *amici curiae* could only result—as they have—in misconstruction of the record and confusion of the issues, we have steadfastly refused to give our consent or encouragement to the filing of briefs either for or against our position. While those friendly to our position have generally respected our wishes, those opposing it have, of course, not felt bound to do so.

We respectfully suggest to the Court that the contentions made in these briefs *amici curiae* are largely, if not wholly, inapplicable to the record in this case, and that a consideration of the appellant's briefs and our own will best present the relevant issues involved, including the question of jurisdiction which we deem to be controlling.

We further respectfully suggest that the fact that some of these briefs have been filed by religious organizations does not indicate that our position is constitutionally

wrong. Majorities are not to be deemed wrong because minorities exist. Nor are laws unconstitutional because all may not choose to avail themselves of their provisions.

Equality of *opportunity*, not equality of *result*, is what the law guarantees. The fact that the religious groups having more numerous adherents will perhaps use the equal opportunity more often or to better advantage than small sects is *no* concern of the Federal Constitution or of the courts.

We respectfully suggest, also, that to the extent that this case is considered on the merits, its most sobering aspect is the overshadowing right of religious-minded parents to direct, control and promote the education of their children in a manner which will afford them opportunity to develop an interest in and an expression of spiritual values on the same plane with secular and materialistic values. It is our position that the Released Time Week-Day Religious Education plan in practice in Champaign, Illinois, gives an opportunity for the expression of this high parental right without any dimunition or impairment of the similar right of the appellant.

Equality is the very touchstone—the *sine qua non* of democracy. To interpret the Federal Constitution to prohibit the use of public school buildings because the classes are religious in nature is to defeat such equality and is to defeat it on religious grounds. Such an interpretation commits religion in every form of its expression to a state of anarchy. Such interpretation destroys the intended and essential symmetry of our political institutions, leaving government to promote, foster, and build every unreligious or irreligious institutional activity but committing religion to a legal vacuum, a reasonless void, and this simply because it is religion.

We suggest to the Court that it is one thing to say

that government may not, by preferment of one religion over another, exercise control over religion or permit religion to exercise control over government, but that it is quite another thing to say that religion and government may not cooperate one with the other or receive the inestimable benefits which each may give to the other.

If such a philosophy is now to become a part of our constitutional law, the report referred to on page 3 of the brief of the General Conference of Seventh Day Adventists, of the President's Committee on Civil Rights and entitled "To Secure These Rights" (1947), becomes a very inaccurate expression, indeed, of "The Ideal of Freedom and Equality", under which heading the following appears (p. 4):

> "The central theme in our American heritage is the importance of the individual person. From the earliest moment of our history we have believed that every human being has an essential dignity and integrity which must be respected and safeguarded. Moreover, we believe that the welfare of the individual is the final goal of group life. Our American heritage further teaches that to be secure in the rights he wishes for himself, each man must be willing to respect the rights of other men. This is the conscious recognition of a basic moral principle: all men are created equal as well as free. Stemming from this principle is the obligation to build social institutions that will guarantee equality of opportunity to all men. Without this equality freedom becomes an illusion. Thus the only aristocracy that is consistent with the free way of life is an aristocracy of talent and achievement. The grounds on which our society accords respect, influence or reward to each of its citizens must be limited to the quality of his personal character and of his social contribution.
>
> "This concept of equality which is so vital a part of the American heritage knows no kinship with notions of human uniformity or regimentation. We abhor the totalitarian arrogance which makes one man say that he will respect another man as his equal only if

he has '*my* race, *my* religion, *my* political views, *my* social position.' In our land men are equal, but they are free to be different. From these very differences among our people has come the great human and national strength of America.

"Thus, the aspirations and achievements of each member of our society are to be limited only by the skills and energies he brings to the opportunities equally offered to all Americans. We can tolerate no restrictions upon the individual which depend upon irrelevant factors such as his race, his color, his religion or the social position to which he is born."

Finally, we commit this case to the judgment of the highest court of our land with a firm conviction that the members of the Court have a full understanding of both the jurisdictional and constitutional questions before the Court, and with full confidence that nothing but the most positive evidence of unconstitutionality of an activity widely practiced and closely supervised by the people will be allowed to strike down such activity as unconstitutional.

We submit that freedom of thought and of religion will be best secured by affirming the judgment of the Supreme Court of Illinois in this case.

Respectfully submitted,

JOHN L. FRANKLIN,
First National Bank Building,
Champaign, Illinois,

A. R. PETERSON,

OWEN RALL,

BURNHAM M. FISK,
135 South LaSalle Street,
Chicago 3, Illinois,

Attorneys for the Appellees.

December 11, 1947.